

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

AUSTIN EDWARD LIGHTFEATHER,

Plaintiff,

vs.

PORNHUB.COM, XXXLPORN.COM,
YOUPorn.COM, PENTHOUSE,
HUSTLER, BUTTMAN, PLAYBOY,
PLAYGIRL, GOOGLE.COM, JEVON
WOODS, BRENDA MAE STINSON,
and U.S. BANK,

Defendants.

8:21CV146

MEMORANDUM AND ORDER

This matter is before the court on Plaintiff's Notice of Appeal (filing 19) and a memorandum from the Clerk of the Court requesting a ruling as to Plaintiff's authorization to proceed in forma pauperis on appeal (filing 20). Plaintiff appeals from the court's October 5, 2021 Memorandum and Order (filing 15) and Judgment (filing 16) which dismissed this action without prejudice. The Notice of Appeal was filed nine months after the court entered its judgment in this case.

Federal Rule of Appellate Procedure 4(a)(1)(A) sets forth that a notice of appeal in a civil case must be filed within 30 days of the entry of judgment. This requirement is both "mandatory and jurisdictional." *Burgs v. Johnson Cnty., Iowa*, 79 F.3d 701, 702 (8th Cir. 1996). A district court may extend the time to file a notice of appeal if a party moves for an extension of time and shows excusable neglect or good cause, provided that the party moves for the extension of time within 30 days of the expiration of the 30-day period set out in Rule 4(a)(1)(A). Fed. R. App. P. 4(a)(5)(A)(ii). In addition, if a party files one of the post-judgment motions listed in Rule (a)(4)(A), the time to file the appeal runs from the entry of the order disposing of the motion. Fed. R. App. P. 4(a)(4)(A). An untimely notice

of appeal cannot serve as a motion for extension of time to file an appeal. *Burgs*, 79 F.3d at 702.

Here, the court entered a final judgment dismissing this case on October 5, 2021. Plaintiff filed his Notice of Appeal 274 days later. He did not file any post-judgment motions that would extend the time to file a notice of appeal. In addition, he did not move to extend the time to file a notice of appeal. Because Plaintiff's appeal is grossly untimely, the court certifies Plaintiff's appeal is not taken in good faith and he is not entitled to proceed in forma pauperis on appeal. *See* 28 U.S.C. § 1915(a)(3) ("An appeal may not be taken in forma pauperis if the trial court certifies in writing that it is not taken in good faith.").

Moreover, as stated in the Prison Litigation Reform Act ("PLRA"), a prisoner cannot

bring a civil action or appeal a judgment in a civil action or proceeding [IFP] if the prisoner has, on 3 or more prior occasions, while incarcerated or detained in any facility, brought an action or appeal in a court of the United States that was dismissed on the grounds that it is frivolous, malicious, or fails to state a claim upon which relief may be granted, unless the prisoner is under imminent danger of serious physical injury.

28 U.S.C. §1915(g).

This court has identified three or more federal court cases brought by Plaintiff, while a prisoner, that were dismissed as frivolous and/or for failure to state a claim. *See Lightfeather v. Prey et al*, No. 8:21-cv-00211-RGK-PRSE (D. Neb.) (Filing Nos. 15 & 16, finding Plaintiff's complaint failed to state a claim for relief and dismissing case on April 8, 2022, after Plaintiff failed to amend complaint); *Lightfeather v. Green et al*, No. 8:21-cv-00208-RGK-PRSE (D. Neb.) (Filing Nos. 12 & 14, finding Plaintiff's complaint failed to state a claim for relief and dismissing case on October 12, 2021, after Plaintiff failed to amend

complaint); *Lightfeather v. Ricketts et al*, No. 8:21-cv-00165-RGK-PRSE (D. Neb.) (Filing Nos. 12 & 14, finding Plaintiff's complaint failed to state a claim for relief and dismissing case on October 7, 2021, after Plaintiff failed to amend complaint); *Lightfeather v. City of Lincoln*, No. 4:20-cv-03118-RGK-PRSE (D. Neb.) (Filing Nos. 112 & 113, May 24, 2021 Memorandum and Order and Judgment dismissing Plaintiff's second amended complaint for failure to state a claim and for being frivolous); *Lightfeather v. Beatrice Sun Times, et al*, No. 8:21-cv-00114-RGK-PRSE (D. Neb.) (Filing Nos. 14 & 15, May 19, 2021 Memorandum and Order and Judgment dismissing Plaintiff's complaint as frivolous). Thus, it appears Plaintiff is also prohibited from proceeding in forma pauperis on appeal pursuant to 28 U.S.C. § 1915(g).

IT IS THEREFORE ORDERED that: Plaintiff is not entitled to proceed in forma pauperis on appeal.

Dated this 15th day of July, 2022.

BY THE COURT:



Richard G. Kopf
Senior United States District Judge